



Fast Track Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22VAC40-191
Regulation title	Background Checks for Child Welfare Agencies
Action title	Amend Regulation to Comply with 2012 Legislation
Date this document prepared	August 16, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

This regulatory action implements amendments to the Code of Virginia (Code) by the 2012 Session of the General Assembly relating to the barrier crimes and to the authority of the State Board of Social Services (Board) to adopt regulations for licensed child day centers. The regulatory action adds state law requirements for background checks prior to approval of adoptive and foster parents by licensed child-placing agencies and makes technical corrections to the regulation.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The State Board of Social Services approved action on 22VAC40-191, Background Checks for Child Welfare Agencies, on August 16, 2012.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

Section 63.2-217 of the Code provides the Board the general authority for the development of regulations to carry out the purposes of Title 63.2. Section 63.2-1734 gives the Board authority to adopt regulations for persons and agencies required to be licensed under Title 63.2. This regulatory action implements amendments by the 2012 Session of the General Assembly related to barrier crimes in §§ 63.2-901.1 and 63.2-1719 of the Code; adds state law requirements (§ 63.2-901.1 of the Code) to the section on approvals of adoptive and foster parents by child-placing agencies; and includes licensed child day centers as facilities covered by the regulation (as a result of amendments to § 63.2-1734 of the Code by the 2012 Session of the General Assembly).

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The amendments are necessary to make the requirements of the regulation consistent with the requirements of state law and to make technical corrections.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Executive Order 14 allows state agencies to use a fast-track rule making process to expedite regulatory changes that are expected to be non-controversial. The amendments to the regulation incorporate requirements of state law and make technical corrections. As a result, no objections are anticipated.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.

The regulation is amended to incorporate additional barrier crimes effective July 1, 2012 listed in § 63.2-1719 of the Code; add an exception effective July 1, 2012 for the approval of kinship foster care parents; and add state law requirements for background checks prior to approval of adoptive and foster parents by licensed child-placing agencies. The regulation is also amended to add licensed child day centers as facilities covered by this regulation.

This action is necessary due to the Code changes effective July 1, 2012 abolishing the Child Day-Care Council and giving the Board the authority to adopt regulations for licensed child day centers. The Child Day-Care Council had adopted a regulation identical to this regulation, so the inclusion of child day centers to the entities regulated by this regulation will not change the background check requirements for licensed child care centers.

Issues

Please identify the issues associated with the proposed regulatory action, including:
1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
3) *other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

The advantage of this regulatory action to the agency and to the public is that it makes the requirements of the regulation consistent with the requirements of state law and clarifies the requirements for regulated entities and licensing staff. There are no disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The proposed changes do not contain any requirements that are more restrictive than federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality is particularly affected by the proposed changes.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

One potential alternative is simply not to amend the regulation to include the requirements of state law. However, leaving the regulation as it is currently written conflicts with the law and is confusing to the regulated entities and to Department of Social Services (DSS) licensing staff, so is not a viable alternative to amending the regulation. The proposed amendments are not expected to have any adverse impact on small businesses.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>Implementation and enforcement of the amendments to the regulation will not result in any increased cost to the state. Licensing staff with responsibility for implementation and enforcement are currently in place.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>None</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>The amendments to the regulation will affect licensed child welfare agencies including child day centers, family day homes, family day systems, independent foster homes, and child-placing agencies; family day homes approved by family day systems and voluntarily registered family day homes.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Licensed child day centers - 2503 Licensed family day homes - 1558 Licensed family day systems - 1 Licensed independent foster homes - 1 Licensed child-placing agencies - 76 Family day homes approved by family day systems - 100 Voluntarily registered family day homes - 1121 All are small businesses.</p>

<p>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>Implementation and enforcement of the new regulation will not result in any increased cost to the affected individuals, businesses, or other entities. The regulatory requirements for the approval of foster and adoptive homes will not impact licensed child-placing agencies because those requirements are currently being enforced under the authority of state law.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Increased ability to protect the health, safety and welfare of the public by having a specific regulation that is consistent with the requirements of state law.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The action incorporates the requirements of state statutes and clarifies existing requirements. There is no less intrusive or less costly alternative that achieves the purpose of the regulation.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed changes will not have any impact on the institution of the family and family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the **pre-emergency** regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulation(s), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
22VAC40-191-10		Definitions	<p>Corrects the definition of “agent” to mean a person empowered to act on behalf of an applicant that is an association, partnership, limited liability company, business trust, or corporation in matters relating to a child welfare agency rather than meaning an employee or volunteer with a child welfare agency. This complies with § 63.2-1702 of the Code.</p> <p>Corrects the definition of “applicant” to 1) also include a person applying for approval as a licensed child day center section because the Code at § 63.2-1734 now authorizes the Board to adopt regulations for licensed child day centers; and 2) require background checks of officers and agents of an association, partnership, limited liability company, business trust, or corporation as required in §§ 63.2-1702, §§ 63.2-1707, and §§ 63.2-1721 of the Code.</p> <p>Corrects the definition of “approved” to coincide with the requirements for approval of foster and adoptive parents in the Standards for Licensed Child-Placing Agencies (22VAC40-131). This will clarify the definition for regulated entities and licensing staff.</p> <p>Corrects the definition of “barrier crime” to include extortion by threat and felony violation of a protective order as required by § 63.2-1719 of the Code.</p> <p>Corrects the error in the definition of “child welfare agency” by changing “foster” homes requesting approval or with approval by family day systems to “family day” homes requesting approval or with approval by family day systems. Family day systems do not approve foster homes.</p> <p>Adds licensed child day centers to and</p>

			deletes foster and adoptive homes from the definition of "facility." This will clarify the definition for regulated entities and licensing staff.
22VAC40-191-20		Describing background checks	Corrects the name of the unit within DSS that conducts searches of the central registry from the "Child Protective Services Unit" to the "Office of Background Investigations".
22VAC40-191-30		Identifying the facilities that are not covered by this regulation	Deletes licensed child day centers from this section and deletes the exception because the Code at § 63.2-1734 now authorizes the Board to adopt regulations for licensed child day centers.
22VAC40-191-40		Identifying who is covered by this regulation	<p>Adds licensed child day centers to this section because the Code at § 63.2-1734 now authorizes the Board to adopt regulations for licensed child day centers.</p> <p>Adds the statement that no person guilty of an offense who has not been granted a waiver may operate, volunteer, or work at a facility governed by this regulation (§§ 63.2-1720 and 63.2-1721 of the Code). This statement is moved to this section from the section on waivers (22VAC40-191-90 D) to make the requirement easier for regulated entities and licensing staff to find.</p> <p>Deletes the requirement for prospective foster parents, adoptive parents, and birth parents of a child in a foster care placement to have a Virginia criminal history record check in addition to a national criminal background check (§ 63.2-901.1 of the Code).</p> <p>Adds the requirement for prospective foster parents, adoptive parents, and birth parents of a child in a foster care placement to have a check of the child abuse and neglect registry in any state in which they have resided for the last five years as required by § 63.2-901.1 of the Code.</p> <p>Adds the requirement for other adults living in a prospective adoptive or foster home to complete a sworn statement or affirmation, have a search of the central registry and of the child abuse and neglect registry in any state in which they have resided for the last five years, and a national criminal background check as required by § 63.2-901.1 of the Code.</p>

			<p>Deletes a subdivision that had been included for implementation of the regulation, but which is no longer applicable or necessary.</p> <p>Clarifies requirements after initial approval for operators of family day homes approved by family day systems, for approved foster and adoptive parents, and for adult household members of approved foster and adoptive homes. This will help regulated entities and licensing staff better understand the requirements.</p> <p>Clarifies requirements for persons 18 years of age or older who begin to reside in an approved foster or adoptive home (prior to final adoption) and for persons who become 18 years of age while residing in an approved foster or adoptive home (prior to final adoption). This will help regulated entities and licensing staff better understand the requirements.</p> <p>Clarifies the exception that persons 14 up to 18 years of age in an approved foster or adoptive home are not required to have a search of the central registry. This will help regulated entities and licensing staff better understand the requirements.</p>
22VAC40-191-50		Explaining requirements for satisfactory background checks.	<p>Adds an "eligible" letter from the Office of Background Investigations as a type of satisfactory criminal history record check report (§ 63.2-901.1 of the Code)</p> <p>Adds an exception for approval of a kinship foster care parent as required by § 63.2-901.1 of the Code and an exception for employees of licensed child day centers as required by § 63.2-1720 of the Code.</p> <p>Deletes a statement that waivers are not possible for religious exempt child day centers. That statement conflicts with § 63.2-1723 of the Code.</p>
22VAC40-191-60		Explaining consequences of unsatisfactory background checks results.	<p>Corrects the name of the unit within DSS that conducts searches of the central registry from the "Child Protective Services Unit" to the "Office of Background Investigations".</p>
22VAC40-191-90		Identifying who may apply for a waiver	<p>Deletes a statement that waivers are not possible for religious exempt child day centers. That statement conflicts with § 63.2-1723 of the Code.</p> <p>Changes the wording of the requirements</p>

			<p>for a waiver to make the requirements consistent with language in § 63.2-1723 of the Code.</p> <p>Deletes a subdivision that was moved to 22VAC40-191-40.</p>
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